

Joel E. Elkins (SBN 256020)
jelkins@weisslawllp.com
WEISS LAW LLP
9107 Wilshire Blvd., Suite 450
Beverly Hills, CA 90210
Telephone: 310/208-2800
Facsimile: 310/209-2348

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SPEISER, On Behalf of Himself and
All Others Similarly Situated

Plaintiff,

vs.

PACIFIC BIOSCIENCES OF CALIFORNIA,
INC., MICHAEL HUNKAPILLER, DAVID
BOTSTEIN, WILLIAM ERICSON,
CHRISTIAN HENRY, RANDY
LIVINGSTON, JOHN F. MILLIGAN,
MARSHALL L. MOHR, KATHY
ORDOÑEZ, and LUCY SHAPIRO,

Defendants.

) Case No.

) CLASS ACTION

) **COMPLAINT FOR**
) **VIOLATIONS OF THE**
) **FEDERAL SECURITIES LAWS**

) JURY TRIAL DEMANDED

Plaintiff David Speiser ("Plaintiff"), by and through his undersigned counsel, alleges the following upon information and belief, including an examination and inquiry conducted by and through his counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge, as follows:

NATURE OF THE ACTION

1
2 1. This is a class action brought on behalf of the public stockholders of Pacific
3 Biosciences of California, Inc. (“Pacific Biosciences” or the “Company”) against Pacific
4 Biosciences and the members of its Board of Directors (the “Board” or the “Individual
5 Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934
6 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission
7 (“SEC”) Rule 14a-9, 17 C.F.R. 240.14a-9, and to enjoin the vote on a proposed transaction,
8 pursuant to which Pacific Biosciences will be acquired by Illumina, Inc. (“Illumina”) through its
9 wholly owned subsidiary, FC Ops Corp. (“Merger Sub”) (the “Proposed Transaction”).
10

11 2. On November 1, 2018, Pacific Biosciences and Illumina issued a joint press release
12 announcing they had entered into an Agreement and Plan of Merger dated November 1, 2018 (the
13 “Merger Agreement”) to sell Pacific Biosciences to Illumina. Under the terms of the Merger
14 Agreement, Pacific Biosciences stockholders will be entitled to receive \$8.00 per share in cash (the
15 “Merger Consideration”). The Proposed Transaction has a total enterprise value of approximately
16 \$1.2 billion on a fully diluted basis.
17

18 3. On December 18, 2018, Pacific Biosciences filed a Definitive Proxy Statement on
19 Schedule 14A (the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends
20 that Pacific Biosciences stockholders vote in favor of the Proposed Transaction, omits and/or
21 misrepresents material information concerning, among other things: (i) the data and inputs
22 underlying the financial valuation analyses that support the fairness opinion provided by the
23 Company’s financial advisor, Centerview Partners LLC (“Centerview”); (ii) the background process
24 leading to the Proposed Transaction; and (iii) Company insiders’ potential conflicts of interest. The
25 failure to adequately disclose such material information constitutes a violation of Sections 14(a) and
26
27
28

1 20(a) of the Exchange Act as Pacific Biosciences stockholders need such material information in
2 order to cast a fully-informed vote or seek appraisal in connection with the Proposed Transaction.

3 4. In short, unless remedied, Pacific Biosciences' public stockholders will be forced to
4 make a voting or appraisal decision on the Proposed Transaction without full disclosure of all
5 material information concerning the Proposed Transaction being provided to them. Plaintiff seeks
6 to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act
7 violations are cured.
8

9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction over the claims asserted herein for violations of Sections
11 14(a) and 20(a) of the Exchange Act and Rule 14a-9 promulgated thereunder pursuant to Section 27
12 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

13 6. The Court has jurisdiction over defendants because each defendant is either a
14 corporation that conducts business in and maintains operations in this District, or is an individual
15 who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by
16 this Court permissible under traditional notions of fair play and substantial justice.
17

18 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's
19 claims arose in this District, where a substantial portion of the actionable conduct took place, where
20 most of the documents are electronically stored, and where the evidence exists. Pacific Biosciences
21 is incorporated in Delaware and is headquartered in this District. Moreover, each of the Individual
22 Defendants, as Company officers or directors, either resides in this District or has extensive contacts
23 within this District.
24

25 **THE PARTIES**

26 8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of
27 Pacific Biosciences.
28

1 9. Defendant Pacific Biosciences is a Delaware corporation with its principal executive
2 offices located at 1305 O'Brien Drive, Menlo Park, California 94025. Pacific Biosciences'
3 common stock is traded on the NASDAQ Global Select Market under the ticker symbol "PACB."

4 10. Defendant Michael Hunkapiller ("Hunkapiller") is Chairman of the Board and has
5 been the Company's President and Chief Executive Officer ("CEO") since 2012 and a director of
6 the Company since 2005.

7 11. Defendant David Botstein ("Botstein") has been a director of the Company since
8 2012.

9 12. Defendant William Ericson ("Ericson") has been a director of the Company since
10 2004 and the Board's Lead Independent Director since 2010.

11 13. Defendant Christian Henry ("Henry") has been a director of the Company since July
12 31, 2018. Defendant Henry previously served as a member of Illumina's executive team from 2005
13 through January 2017 where he served in a number of different roles including Chief Financial
14 Officer, Chief Commercial Officer and General Manager of the Life Sciences Business.

15 14. Defendant Randy Livingston ("Livingston") has been a director of the Company
16 since 2009.

17 15. Defendant John F. Milligan ("Milligan") has been a director of the Company since
18 2013.

19 16. Defendant Marshall L. Mohr ("Mohr") has been a director of the Company since
20 2012.

21 17. Defendant Kathy Ordoñez ("Ordoñez") has been a director of the Company since
22 2014 and previously served as the Company's Chief Commercial Officer and Executive Vice
23 President from October 30, 2017 until October 30, 2018.

24 18. Defendant Lucy Shapiro ("Shapiro") has been a director of the Company since 2012.
25
26
27
28

1 19. Defendants Hunkapiller, Botstein, Ericson, Henry, Livingston, Milligan, Mohr,
2 Ordoñez, and Shapiro are collectively referred to herein as the “Board” or the “Individual
3 Defendants.”

4 **OTHER RELEVANT ENTITIES**

5 20. Illumina is a Delaware corporation with its principal executive offices located at
6 5200 Illumina Way, San Diego, California 92122. Illumina’s common stock is traded on the
7 NASDAQ Global Select Market under the ticker symbol “ILMN.”

8 21. Merger Sub is a Delaware corporation and a wholly owned subsidiary of Illumina.
9

10 **CLASS ACTION ALLEGATIONS**

11 22. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules
12 of Civil Procedure on behalf of all persons and entities that own Pacific Biosciences common stock
13 (the “Class”). Excluded from the Class are defendants and their affiliates, immediate families, legal
14 representatives, heirs, successors or assigns and any entity in which defendants have or had a
15 controlling interest.
16

17 23. This action is properly maintainable as a class action under Rule 23 of the Federal
18 Rules of Civil Procedure. The Class is so numerous that joinder of all members is impracticable.
19 While the exact number of Class members is unknown to Plaintiff at this time and can only be
20 ascertained through discovery, Plaintiff believes that there are thousands of members in the Class.
21 As of December 7, 2018, there were approximately 149,621,715 shares of Pacific Biosciences
22 common stock outstanding. All members of the Class may be identified from records maintained
23 by Pacific Biosciences or its transfer agent and may be notified of the pendency of this action by
24 mail, using forms of notice similar to that customarily used in securities class actions.
25

26 24. Questions of law and fact are common to the Class and predominate over questions
27 affecting any individual Class member, including, *inter alia*:
28

1 (a) Whether defendants have violated Section 14(a) of the Exchange Act and
2 Rule 14a-9 promulgated thereunder;

3 (b) Whether the Individual Defendants have violated Section 20(a) of the
4 Exchange Act; and

5 (c) Whether Plaintiff and the other members of the Class would suffer
6 irreparable injury were the Proposed Transaction consummated.

7
8 25. Plaintiff will fairly and adequately protect the interests of the Class, and has no
9 interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent. Plaintiff
10 has retained competent counsel experienced in litigation of this nature.

11 26. A class action is superior to all other available methods for the fair and efficient
12 adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the
13 management of this action that would preclude its maintenance as a class action.

14 27. Defendants have acted, or refused to act, on grounds generally applicable to the
15 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
16 behalf of the Class is appropriate.
17

18 **SUBSTANTIVE ALLEGATIONS**

19 **Background of the Company and the Proposed Transaction**

20
21 28. Pacific Biosciences designs, develops, and manufactures sequencing systems to
22 resolve genetically complex problems. The Company's Single Molecule, Real-Time ("SMRT")
23 sequencing technology enables single molecule, real-time detection of biological processes. This
24 SMRT technology enables the observation of DNA synthesis as it occurs in real time by harnessing
25 the natural process of DNA replication, which is a highly efficient and accurate process actuated by
26 the DNA polymerase.
27
28

1 29. The Company launched its first commercial product, the PacBio RS System, during
2 the second quarter of 2011 and launched its higher performance PacBio RS II System during the
3 second quarter of 2013. In September of 2015, Pacific Biosciences announced the Sequel System,
4 which is based on the same underlying SMRT technology as the PacBio RS II System, but can
5 achieve up to approximately seven times the throughput with newly-designed SMRT Cells.

6 30. Based on its SMRT technology, Pacific Biosciences' products enable: (i) de novo
7 genome assembly to finish genomes in order to more fully identify, annotate, and decipher genomic
8 structures; (ii) full-length transcript analysis to improve annotations in reference genomes,
9 characterize alternatively spliced isoforms in important gene families, and find novel genes; (iii)
10 targeted sequencing to more comprehensively characterize genetic variations; and (iv) real-time
11 kinetic information for epigenome characterization. The Company's PacBio sequencing systems,
12 including consumables and software, provide a simple, fast, end-to-end workflow for SMRT
13 Sequencing.
14

15 31. Pacific Biosciences' customers include research institutions; commercial
16 laboratories; genome centers; clinical, government, and academic institutions; genomics service
17 providers; pharmaceutical companies; and agricultural companies.
18

19 32. Pacific Biosciences' total revenue was \$93.5 million for the year ended December
20 31, 2017, \$90.7 million for 2016 and \$92.8 million for 2015. The Company's total assets were
21 \$144.1 million as of December 31, 2017 and \$137.9 million as of December 31, 2016.
22

23 33. Beginning in August 2017, the Company, with the assistance of a financial advisor,
24 contacted 23 parties concerning their interest in a strategic partnership with Pacific Biosciences.
25 These parties included Illumina and a strategic partner in the Chinese market, referred to in the
26 Proxy Statement as "Party A."
27
28

1 34. Beginning in September 2017, members of Company management held various
2 discussions with Illumina management regarding a strategic partnership. In mid-September 2018,
3 Illumina's President and CEO Francis deSouza ("deSouza") indicated that Illumina might prefer to
4 acquire the Company rather than enter into a strategic partnership. On September 25, 2018,
5 Illumina submitted a non-binding letter expressing its interest in acquiring the Company for \$7.00
6 per share.

7 35. On October 12, 2018, the Company entered into a non-binding term sheet with Party
8 A regarding a possible commercial partnership with Party A and the associated investment by one
9 or more Chinese investors (the "Partnership Transaction") with a goal of entering into the
10 Partnership Transaction before November 10, 2018.

11 36. On October 20, 2018, Illumina increased the value of its proposal to \$8.00 per share.

12 37. At a November 1, 2018 Board meeting, Centerview rendered its fairness opinion and
13 the Board approved the Merger Agreement. Later that day, the Company entered into the Merger
14 Agreement with Illumina for \$8.00 per share.

15 38. Also on November 1, 2018, Pacific Biosciences and Illumina issued a joint press
16 release announcing the Proposed Transaction, which stated, in relevant part:

17 SAN DIEGO & MENLO PARK, Calif.– Nov. 1, 2018– Illumina, Inc. (NASDAQ:
18 ILMN) and Pacific Biosciences (NASDAQ:PACB) today announced they have
19 signed an agreement for Illumina to acquire Pacific Biosciences at a price of \$8.00
20 per Pacific Biosciences share in an all-cash transaction. This price represents a
21 premium of 71% to Pacific Biosciences' 30 trading day volume weighted average
22 share price as of the market close on October 31st, 2018, and a total enterprise value
23 of approximately \$1.2 billion on a fully diluted basis.

24 The agreement has been approved by the board of directors of Illumina and Pacific
25 Biosciences. The acquisition complements Illumina sequencing solutions with
26 accurate long-read sequencing capabilities to answer a set of complex genomic
27 questions. While Illumina's accurate and economic short-read sequencing platforms
28 address the majority of sequencing applications optimally, select applications, such
as *de novo* sequencing and sequencing of highly homologous regions of genomes,
are better addressed with accurate long-reads. With its acquisition of Pacific
Biosciences, Illumina will be positioned to provide integrated workflows and novel

1 innovations that bring together the best of both technologies to help researchers
2 advance their discoveries faster and clinicians offer new tests economically.

3 “PacBio’s unmatched accuracy mirrors that of Illumina’s in short-read sequencing.
4 Combining the two technologies positions us to reach more applications, accelerate
5 the pace of genomic discovery and bolster our innovation engine which has been a
6 hallmark of Illumina since our inception,” said Francis deSouza, President and Chief
Executive Officer of Illumina. “PacBio’s relentless pursuit to improve sequencing
accuracy, while driving down the cost, underscores the potential of long-reads to
expand sequencing to new customers and applications.”

7 “Illumina continues to democratize the use of sequencing at an unprecedented rate.
8 Through this combination, thousands of researchers will now have direct access to
9 this technology,” said Michael Hunkapiller, Ph.D., Chief Executive Officer of
Pacific Biosciences. “Illumina and Pacific Biosciences have shared values and a
10 commitment to innovation. Our complementary sequencing technology, once
integrated, will offer customers a new standard of insight and understanding, opening
11 new frontiers of genomic utility.”

12 The transaction is subject to approval by the shareholders of Pacific Biosciences, as
13 well as other customary closing conditions, including applicable regulatory
approvals. Illumina expects to close the transaction in mid-2019.

14 **Insiders’ Interests in the Proposed Transaction**

15 39. Pacific Biosciences insiders are the primary beneficiaries of the Proposed
16 Transaction, not the Company’s public stockholders. The Board and the Company’s executive
17 officers are conflicted because they will have secured unique benefits for themselves from the
18 Proposed Transaction not available to Plaintiff and the public stockholders of Pacific Biosciences.

19 40. Pacific Biosciences’ directors and executive officers stand to reap substantial
20 financial benefits for securing the deal with Illumina. The following table summarizes the
21 payments the Company’s directors and executive officers stand to receive in connection with their
22 equity awards upon consummation of the Proposed Transaction:
23
24
25
26
27
28

Name	Number of Shares Held (#)(1)	Value of Shares Held \$(1)	Number of Shares Subject to In-the-Money Options (#)(2)	Value of In-the-Money Options \$(2)	Number of Shares Subject to Company RSUs and Company PSUs (#)(3)	Value of Shares Subject to Company RSUs and Company PSUs \$(3)	Total (\$)
Michael Hunkapiller, Ph.D.	2,300,000	18,400,000	2,855,000	9,198,150	150,000	1,200,000	28,798,150
Susan K. Barnes	347,417	2,779,336	1,436,262	3,394,781	131,250	1,050,000	7,224,117
Kevin Corcoran(4)	163,115	1,304,920	602,496	1,783,015	—	—	3,087,935
Michael Phillips	200,156	1,601,248	597,500	1,791,750	44,835	358,680	3,751,678
David Botstein, Ph.D.	—	—	160,000	732,450	—	—	732,450
William Ericson	—	—	150,000	674,250	—	—	674,250
Randy Livingston	—	—	190,000	768,650	—	—	768,650
Christian Henry	—	—	35,000	151,900	—	—	151,900
Marshall Mohr	—	—	185,000	846,700	—	—	846,700
John Milligan, Ph.D.	—	—	135,000	570,050	—	—	570,050
Kathy Ordoñez(5)	—	—	547,500	2,578,075	131,250	1,050,000	3,628,075
Lucy Shapiro, Ph.D.	101,666	813,328	58,334	257,918	—	—	1,071,246

41. Further, if they are terminated in connection with the Proposed Transaction, Pacific Biosciences' named executive officers stand to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

Name	Cash \$(1)	Equity \$(2)	Perquisites/ Benefits \$(3)	Total Payments (\$)
Michael Hunkapiller, Ph.D.	\$1,030,001	\$2,370,376	—	\$3,400,377(4)
Susan K. Barnes	\$ 617,501	\$1,889,405	\$ 57	\$2,506,963(4)
Kathy Ordoñez	—	\$2,866,165	—	\$2,866,165
Kevin Corcoran(5)	—	—	—	—
Michael Phillips	\$ 168,400	\$ 829,603	\$ 9,508	\$1,007,511(4)

The Proxy Statement Contains Material Misstatements and Omissions

42. The defendants filed a materially incomplete and misleading Proxy Statement with the SEC and disseminated it to Pacific Biosciences' stockholders. The Proxy Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed decision whether to vote their shares in favor of the Proposed Transaction or seek appraisal.

43. Specifically, as set forth below, the Proxy Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by the Company's financial advisor, Centerview; (ii) the background process leading to the Proposed Transaction; and (iii) Company insiders' potential conflicts of interest. Accordingly, Pacific Biosciences stockholders are being asked to make a voting or

1 appraisal decision in connection with the Proposed Transaction without all material information at
2 their disposal.

3 ***Material Omissions Concerning Centerview's Financial Analyses***

4 44. The Proxy Statement describes Centerview's fairness opinion and the various
5 valuation analyses performed in support of its opinion. However, the description of Centerview's
6 fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses.
7 Without this information, as described below, Pacific Biosciences' public stockholders are unable to
8 fully understand these analyses and, thus, are unable to determine what weight, if any, to place on
9 Centerview's fairness opinion in determining whether to vote in favor of the Proposed Transaction
10 or seek appraisal. This omitted information, if disclosed, would significantly alter the total mix of
11 information available to Pacific Biosciences' stockholders.
12

13 45. With respect to Centerview's *Discounted Cash Flow Analysis*, the Proxy Statement
14 fails to disclose: (i) the line items Centerview used to calculate unlevered free cash flow; (ii)
15 quantification of the inputs and assumptions underlying the selection of the discount rates ranging
16 from 11% to 13%; (iii) the range of implied terminal values of Pacific Biosciences at the end of
17 the Forecast period; (iv) Centerview's basis for using a range of terminal EBITDA multiples of
18 12.0x to 16.0x to calculate the range of terminal values; (v) the implied perpetuity growth rates
19 resulting from the analysis; and (vi) the number of fully-diluted outstanding shares of common
20 stock as of October 30, 2018.
21

22 46. With respect to Centerview's *Selected Public Company Analysis*, the Proxy
23 Statement fails to disclose: (i) the individual multiples and financial metrics for each of the selected
24 comparable companies observed by Centerview in the analysis; and (ii) any benchmarking analyses
25 for Pacific Biosciences in relation to the selected companies analyzed by Centerview.
26
27
28

47. With respect to Centerview's *Selected Precedent Transactions Analysis*, the Proxy Statement fails to disclose the individual multiples and financial metrics for each of the selected transactions analyzed by Centerview in the analysis.

48. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

49. The omission of this information renders the statements in the "Opinion of Centerview Partners LLC" section of the Proxy Statement false and/or materially misleading in contravention of the Exchange Act.

Material Omissions Concerning the Background Process of the Proposed Transaction

50. The Proxy Statement omits material information relating to the sale process leading up to the Proposed Transaction.

51. In connection with the sale process, the Proxy Statement sets forth that "[b]eginning in August 2017 and continuing into 2018, Pacific Biosciences, with the assistance of an internationally recognized investment banking firm, contacted 23 parties (including Illumina and Roche) concerning their interest in a strategic partnership with Pacific Biosciences." Proxy Statement at 35. The Proxy Statement further discloses that

By September 2018, Pacific Biosciences had identified a preferred strategic partner for the Chinese market (which we refer to as "Party A") and was actively discussing a commercial partnership with Party A. Party A was one of the 23 companies previously contacted concerning a strategic partnership. In addition, Pacific Biosciences was in discussions regarding an investment into Pacific Biosciences by one or more Chinese investors, with this investment to occur at approximately the same time as Pacific Biosciences entered into a commercial partnership with Party A.

Id. at 36. The Proxy Statement fails, however, to expressly indicate whether the Company entered into confidentiality agreements with any of the parties contacted beginning in August 2017 in connection with a potential strategic partnership, not including Illumina, and if so, whether these

1 confidentiality agreements are still in effect and/or contain “don’t ask, don’t waive” standstill
2 provisions that are presently precluding these parties from making a topping bid for the Company.

3 52. The disclosure of the existence and terms of any confidentiality agreements Pacific
4 Biosciences entered into with any other party is crucial to Pacific Biosciences stockholders being
5 fully informed of whether their fiduciaries have put in place restrictive devices to foreclose a
6 topping bid for the Company.

7 53. The omission of this information renders the statements in the “Background of the
8 Merger” section of the Proxy Statement false and/or materially misleading in contravention of the
9 Exchange Act.
10

11 ***Material Omissions Concerning Potential Conflicts of Interest of Company Insiders***

12 54. The Proxy Statement also fails to disclose material information concerning potential
13 conflicts of interest faced by Company insiders.

14 55. For example, during a November 1, 2018 investor and media conference call
15 following the announcement of the Proposed Transaction, defendant Hunkapiller stated:
16

17 I’m very pleased with the announcement of our planned combination with Illumina
18 **and to be sharing with our employees, customers and investors that we will be**
19 **joining the Illumina family.** I’m extremely proud of the work that the PacBio team
20 has accomplished as a standalone company, and I believe that as part of Illumina, we
21 can continue to innovate our SMRT Sequencing capabilities and reach more
22 customers and address more applications substantially faster than we could do as a
23 standalone enterprise.

24 As Francis has mentioned, not only do the 2 companies share a commitment to
25 accuracy, supporting scientific and clinical markets with quality products and to
26 customer-focused innovation, but **we also share a similar culture that we think**
27 **will enable us to integrate quickly** and continue to deliver on our technology
28 roadmap that substantially broadens the addressable opportunity for our
complimentary long-read platform. **We look forward to serving our customers as**
part of Illumina in the future.

Emphasis added.

1 56. The Proxy Statement, however, fails to disclose whether any of Pacific Biosciences'
2 executive officers or directors is continuing their employment following consummation of the
3 Proposed Transaction, as well as the details of all employment and retention-related discussions and
4 negotiations that occurred between Illumina and Pacific Biosciences' executive officers, including
5 who participated in all such communications, when they occurred and their content. The Proxy
6 Statement further fails to disclose whether any of Illumina's prior proposals or indications of
7 interest mentioned management retention in the combined company or the purchase of or
8 participation in the equity of the surviving corporation.
9

10 57. The omission of this information renders the statements in the "Background of the
11 Merger," and "Interests of Pacific Biosciences' Directors and Executive Officers in the Merger"
12 sections of the Proxy Statement false and/or materially misleading in contravention of the Exchange
13 Act.
14

15 58. The Individual Defendants were aware of their duty to disclose this information and
16 acted negligently (if not deliberately) in failing to include this information in the Proxy Statement.
17 Absent disclosure of the foregoing material information prior to the stockholder vote on the
18 Proposed Transaction, Plaintiff and the other members of the Class will be unable to make a fully-
19 informed decision whether to vote in favor of the Proposed Transaction or seek appraisal and are
20 thus threatened with irreparable harm warranting the injunctive relief sought herein.
21

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Class Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act 25 And SEC Rule 14a-9 Promulgated Thereunder**

26 59. Plaintiff repeats all previous allegations as if set forth in full.

27 60. SEC Rule 14a-9, 17 C.F.R. §240.14a-9, promulgated pursuant to Section 14(a) of the
28 Exchange Act, provides:

1 No solicitation subject to this regulation shall be made by means of any proxy
2 statement, form of proxy, notice of meeting or other communication, written or oral,
3 containing any statement which, at the time and in light of the circumstances under
4 which it is made, is false or misleading with respect to any material fact, or which
5 omits to state any material fact necessary in order to make the statements therein not
false or misleading or necessary to correct any statement in any earlier
communication with respect to the solicitation of a proxy for the same meeting or
subject matter which has become false or misleading.

6 61. During the relevant period, defendants disseminated the false and misleading Proxy
7 Statement specified above, which failed to disclose material facts necessary in order to make the
8 statements made, in light of the circumstances under which they were made, not misleading in
9 violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

10 62. By virtue of their positions within the Company, the defendants were aware of this
11 information and of their duty to disclose this information in the Proxy Statement. The Proxy
12 Statement was prepared, reviewed, and/or disseminated by the defendants. The Proxy Statement
13 misrepresented and/or omitted material facts, including material information about (i) the data and
14 inputs underlying the financial valuation analyses that support the fairness opinion provided by
15 Centerview; (ii) the background process leading to the Proposed Transaction; and (iii) Company
16 insiders' potential conflicts of interest. The defendants were at least negligent in filing the Proxy
17 Statement with these materially false and misleading statements.
18

19 63. The omissions and false and misleading statements in the Proxy Statement are
20 material in that a reasonable stockholder would consider them important in deciding how to vote on
21 the Proposed Transaction or whether to seek appraisal. In addition, a reasonable investor would
22 view a full and accurate disclosure as significantly altering the "total mix" of information made
23 available in the Proxy Statement and in other information reasonably available to stockholders.
24

25 64. By reason of the foregoing, the defendants have violated Section 14(a) of the
26 Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.
27
28

Class Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act

67. The Individual Defendants acted as controlling persons of Pacific Biosciences within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Pacific Biosciences and participation in or awareness of the Company's actions or intimate knowledge of the false statements contained in the Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the false statements which Plaintiff contends are false and misleading.

69. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Proxy Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

1 Plaintiff demands a trial by jury on all claims and issues so triable.

2 Dated: January 4, 2019

WEISSLAU LLP

Joel E. Elkins

By: /s/ Joel E. Elkins

Joel E. Elkins

9107 Wilshire Blvd., Suite 450

Beverly Hills, CA 90210

Telephone: 310/208-2800

Facsimile: 310/209-2348

-and-

Richard A. Acocelli

1500 Broadway, 16th Floor

New York, NY 10036

Telephone: 212/682-3025

Facsimile: 212/682-3010

OF COUNSEL:

BRAGAR EAGEL & SQUIRE, P.C.

Melissa A. Fortunato

885 Third Avenue, Suite 3040

New York, New York 10022

Tel: (212) 308-5858

Fax: (212) 486-0462

Email: fortunato@bespc.com

Attorneys for Plaintiff

Attorneys for Plaintiff